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REMARKS

Reconsideration of the application is respectfully requested, if view of the following remarks.

The present invention is directed to frozen confections which are suitable for inclusion in cartridges, from which they can be extruded. The product must be soft enough so that it can conveniently be extruded without undue pressure. Many past products have required temperatures no lower than -12oC for extrusion. This has caused problems since it is desirable to keep the products in freezing cabinets which are maintained at around -18oC or less. Applicants have discovered frozen aerated confections which are sufficiently soft that they can be extruded from a cartridge at -18oC by careful selection of sugars and yet can still minimize amounts of glycerol and avoid high overrun.

Claim 1 recites a frozen product having a frozen aerated confection with an overrun of above 20% and below 100%, with no more than 1.5% w/w/ glycerol, freezing point depressants at above 25% w/w and under 37% w/w and between 0 and 15w/w fat wherein the freezing point depressants have a number average molecular weight <M>n of less than 275.

Cole et al. US Patent No. 4,452,824 is directed to a soft frozen dessert product which is said readily to be extruded upon removal from a home freezer and which has a relatively high ratio of higher saccharides to mono- and disaccharides and which contain sugar alcohol and/or polyhydric alcohol ingredients. In column 8, two numerical parameters (ratios 1 and 2) are mentioned which are said to quantify the respective

saccharide distributions obtained. A numerical relationship for ratios 1 and 2 is obtained and Cole et al. indicate that formulations which satisfy the relationship function well as soft ice cream desserts, for example, in that they are extrudable from a collapsible package upon removal from a home freezer.

The present claims recite upper amounts for glycerol and for the number average molecular weight of the freezing point depressants. The Office provides no explanation as to why one of ordinary skill would be led by Cole et al. to the recited molecular weights in combination with the other features recited in the present claims. In this respect, the Office appears to ignore Cole's "relationship" which is said to lead to soft ice creams extrudable upon removal from a home freezer and does not even attempt to show how the relationship could satisfy applicants' claims.

In response to an earlier office action pointing to specific examples of Cole et al. having low or no glycerol, applicants provided calculations in the form of a declaration by Lloyd Wix which indicated that the molecular weights of all of those examples were not within the ranges claimed and showed calculations in support thereof. Having failed to find the present invention in those examples, the Office now takes a broad brush approach and does not attempt to show how one of ordinary skill following Cole et al.'s teachings would be led to the present invention. If anything, the Office starts with applicants' teaching (in the specification) and indicates that one could get there from Cole et al. without undue experimentation.

In view of the foregoing, it is submitted that the Office has not met its burden to show prima facie that Cole et al. teaches compositions having all of the limitations of the present claims, and it is respectfully requested that the rejection be withdrawn. Cole '154 would not seem to remedy the deficiencies of Cole et al. '284 and indeed also

discloses a "relationship" which the Office ignores.

In view of the foregoing, it is respectfully requested that the application be allowed.

Respectfully submitted,

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